

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	CR. NO. 02-10264-DPW
)	
JOSE RIVERA, JR.)	
Defendant.)	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION FOR A SENTENCING REHEARING

The United States of America, by its attorneys, United States Attorney Michael J. Sullivan, and Assistant U. S. Attorney Peter K. Levitt, hereby files this memorandum in opposition to the defendant's motion for a sentencing rehearing. For the reasons stated below, the defendant's motion is untimely and there exists no authority (and the defendant has cited none) for the defendant to have a "sentencing rehearing" a year and half after his sentence was imposed. See 18 U.S.C. § 3582.

On September 12, 2002, the defendant was indicted for conspiracy to distribute 50 grams or more of cocaine base, also known as "crack cocaine", and two substantive cocaine base (a/k/a "crack cocaine") distribution charges (one alleging over 5 grams and the other alleging over 50 grams). [Dkt. #1] On May 8, 2003, the defendant pled guilty, pursuant to a plea agreement, to all three counts of the indictment. [Dkt. ## 59-60] On September 10, 2003, this Court sentenced the defendant to a term of imprisonment of 120 months to be followed by 5 years of supervised release, and the Court entered the judgment that same day. [Dkt. #70]

The defendant did not file a notice of appeal. Instead, on April 22, 2005, approximately a year and a half after his sentence, the defendant filed a two-sentence motion requesting a "sentencing rehearing" on the grounds that "the Court relied on a quantity of drugs that he did not have the opportunity to challenge in Court." Deft's Motion. The defendant's motion cites no authority for this request.

The defendant's motion is untimely and there is no authority in this case for the defendant to be re-sentenced a year and a half after the final judgment entered. See 28 U.S.C. § 3582. For the foregoing reasons, the defendant's motion should be denied.

Respectfully submitted,
MICHAEL J. SULLIVAN
United States Attorney

By: /s PETER K. LEVITT
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DATED: September 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2005, I caused this motion to be served by facsimile and mail on John McBride, counsel for the defendant.

/s PETER K. LEVITT

PETER K. LEVITT

Assistant U.S. Attorney